

71 Am. Jur. 2d State and Local Taxation § 13

American Jurisprudence, Second Edition | May 2021 Update

State and Local Taxation

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Part One. General Principles

II. Taxes Contrasted with Other Charges, Exactions, or Receipts

B. Fees

§ 13. License fees

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West's Key Number Digest

West's Key Number Digest, [Licenses](#) 1

West's Key Number Digest, [Taxation](#) 2000 to 2003, 2013

The term “license fee” or “license tax” implies an imposition or exaction on the right to use or dispose of property, to pursue a business, occupation, or calling or to exercise a privilege, and such charges may be imposed either under the police power for purposes of regulation or under the taxing power for purposes of revenue.¹ A license fee is made primarily for regulation, with the fee to cover the cost and the expense of supervision or regulation.² A regulatory license fee imposed by a municipal corporation under the police power is not a tax and is not subject to any of the particular constitutional limitations which apply to the taxing power as such.³ Fees for licenses required for the operation of various businesses are not taxes;⁴ if money collected is for a license to engage in business and the proceeds therefrom are purposed mainly to service, regulate, and police such business or activity, it is regarded as a license fee.⁵

In some jurisdictions, to determine whether an exaction authorized by statute or ordinance is in reality an occupation tax rather than a license fee, the courts consider whether the primary purpose of the exaction, when the statute or ordinance is considered as a whole, is for regulation or for raising “revenue”; if the former, then the exaction is a “license fee,” but if the latter, then it is an “occupation tax” regardless of the name by which it is designated.⁶

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Footnotes

¹ [V-1 Oil Co. v. Utah State Dept. of Public Safety](#), 131 F.3d 1415 (10th Cir. 1997); [Terry v. City of Portland](#), 204 Or. 478, 269 P.2d 544 (1954).

² [Edgerton Contractors, Inc. v. City of Wauwatosa](#), 324 Wis. 2d 256, 2010 WI App 45, 781 N.W.2d 228 (Ct. App. 2010).

³ §§ 61, 95, 97, 98, 100.

⁴ [Medias v. City of Indianapolis](#), 216 Ind. 155, 23 N.E.2d 590, 125 A.L.R. 590 (1939) (license fee for the operation of a pawnbroking business).

⁵ [V-1 Oil Co. v. Utah State Dept. of Public Safety](#), 131 F.3d 1415 (10th Cir. 1997); [Maine Milk Producers, Inc. v. Commissioner of Agriculture, Food and Rural Resources](#), 483 A.2d 1213 (Me. 1984).

⁶ [El Paso Apartment Ass'n v. City of El Paso](#), 415 Fed. Appx. 574 (5th Cir. 2011) (applying Texas law).

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